IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Bail Appl..No. 5511 of 2007()

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[CRIME NOT REGISTERED]

: PETITIONER

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K.C.RAJESH GED 29,S/O. CHANDRAN,
KAROTHUPARAMBU HOUSE,THEKKUMBHAGOM,
TRIPUNITHURA.

BY ADV. SRI.C.P.UDAYABHANU

RESPONDENTS:

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STATE OF KERALA,REPRESENTED
BY THE S.I. OF POLICE,MANCHERY POLICE STATION
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**R.BASANT, J.**

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B.A.No.5511 of 2007

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Dated this the 3rd day of October 2007

**O R D E R**

Application for anticipatory bail. The petitioner apprehends arrest in some vehicle transaction and he has rushed to this court with this application for anticipatory bail. According to the petitioner, he is absolutely innocent. He has absolutely no culpable responsibility for any shady vehicle transaction. He had purchased a vehicle from one Ramachandran Nair. In respect of that vehicle, some allegations are raised. Apprehending arrest on the basis of such unfounded allegations, he has come to this court for anticipatory bail.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent and to save him from vexatious arrest and detention, directions under Section 438 Cr.P.C may be issued in his favour.

3. The learned Public Prosecutor after taking instructions opposes the application vehemently. The learned Public Prosecutor submits that the petitioner is arrayed as an

accused - accused No.3 in crime No.542/07 of Mancheri police station. He is required to be interrogated and arrested in that crime.

4. The said crime has been registered on the basis of a complaint by the de facto complainant, one Imthias. The said Imthias in the said complaint has alleged that he had entered into the transaction of the exchange of two vehicles with one Mujeeb. A vehicle belonging to Mujeeb was given to the de facto complainant and the de facto complainant gave back another vehicle belonging to him to Mujeeb. Some payments were to be made for adjusting the value. Such payments were also made to the de facto complainant. Later, he came to know that some racket was working in respect of Qualis cars and they were indulging in the sale of stolen Qualis cars. The de facto complainant then demanded that Mujeeb must return his vehicle to the de facto complainant and take back the vehicle which was given by Mujeeb to the de facto complainant. Mujeeb did not oblige and it is then the de facto complainant lodged the complaint arraying Mujeeb as the sole accused.

5. Investigation revealed that Mujeeb is a bona fide purchaser for consideration of the car in question. But the said car is suspected to be thieved/stolen vehicle. That vehicle stood registered in the name of one Nazer. The said Nazer has now been arrayed as the first accused in that crime. The said Nazer has, in turn, purchased the vehicle from the petitioner herein and One Ramachandran Nair. The petitioner and the said Ramachandran Nair had allegedly met the said Nazer at the work shop of one Musthafa and it is they who allegedly negotiated for the sale of the said Qualis car to Nazer. According to the investigating officers, the petitioner and Ramachandran Nair are very much involved in the shady transaction. They have to be interrogated thoroughly to ascertain the real nature of the criminal offence committed and the sequence of events.

6. The learned Public Prosecutor submits that the present investigation reveals that the vehicle was transferred in the name of Nazer by the petitioner herein and Ramachandran Nair who are arrayed as accused 3 and 4 respectively in the crime now. They, together, had allegedly sold the vehicle to

Nazer in the presence of Musthafa, a workshop owner. Unless the petitioner and Ramachandran Nair are interrogated, the investigation cannot make any further progress. Both have been arrayed as accused by now. The said Ramachandran Nair had already been arrested in some other crime and he has been arrayed as an accused in this crime also, it is submitted. The learned Public Prosecutor submits that the mystery of the crime has to be resolved. The investigator has sailed to the conclusion that Mujeeb is not knowingly involved in any crime and he is only a bona fide purchaser. Nazer's complicity, if any, has to be ascertained. The complicity of the petitioner and Ramachandran Nair has also got to be ascertained. Their interrogation is absolutely essential. The available indications suggest that the petitioner and Ramachandran Nair are also culpably involved. But final decision can be taken only after further investigation. Arrest and interrogation of the petitioner is absolutely necessary. The petitioner may not be permitted to arm himself with an order of anticipatory bail, submits the learned Public Prosecutor.

7. The learned counsel for the petitioner submits that if

Mujeeb can be assumed to be a bona fide purchaser, there is no reason why the petitioner should not also be given that benefit. The learned counsel for the petitioner submits that going by some of the reports filed in the case, it would appear that it is the case of the petitioner that Ramachandran Nair had transferred the vehicle to the petitioner and the petitioner, in turn, had transferred the same to Nazer. There is absolutely nothing prima facie to indicate that the petitioner had any contumacious knowledge or responsibility. In these circumstances, the petitioner may be granted anticipatory bail, it is prayed.

8. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that available indications suggest that the petitioner and Ramachandran Nair together had got the vehicle transferred to the said Nazer. All details will have to be ascertained - Where did the petitioner and Ramachandran Nair get the vehicle from? Who was the original registered owner? Who was in possession of the vehicle? Why is the number of the vehicle tampered? All these will have to be ascertained. Permitting the petitioner to be

armed with an order of anticipatory bail would virtually frustrate and hamper the investigation in this crime. The prosecution can now only say that available indications generate serious doubt and suspicion about the role of the petitioner in the transaction. No final decision has been taken yet. But the petitioner will have to be interrogated and investigation will have to be continued. The petitioner may not be granted anticipatory bail, asserts the learned Public Prosecutor.

9. In the nature of the contentions raised, the learned Public Prosecutor was requested to make the case diary available for the perusal of the court. The case diary has been perused by me. At this early stage of investigation, I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on going through the case diary, I find merit in the submissions made by the learned Public Prosecutor that the petitioner has to be interrogated and the role of the petitioner and Ramachandran Nair in the creation of false documents in respect of the vehicle will have to be ascertained. I find merit in the submissions of the learned Public Prosecutor

that at this early stage of the investigation, there is absolutely no circumstance justifying or warranting the invocation of the extraordinary equitable discretion in favour of the petitioner. In the light of the statement of Musthafa the petitioner and Ramachandran Nair are suspected and therefore the petitioner also has to be interrogated.

10. I am in these circumstances satisfied that anticipatory bail does not deserve to be granted to the petitioner. The petitioner must now follow the normal and ordinary course of appearing before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail.

11. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

**(R.BASANT, JUDGE)**

jsr // True Copy// PA to Judge

**R.BASANT, J.**

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007